

KULBHUSHAN SHARMA Vs. HIMACHAL PRADESH NATIONAL LAW UNIVERSITY GANDAL AND ANR.

The Order of the Court was as follows :

->In this writ petition, the petitioner who claims to be the owner of lands, in all measuring about 80 acres in several survey numbers situated at Cheluvara an Marundudu villages of Madikeri taluk, and who claims to be cultivating coffee in these lands has sought for the following reliefs in the writ petition :

a) ISSUE a writ of declaration, declaring non-communication of the decision of the Tree Officer on the application of the petitioner made on 26-3-96 after lapse of period of one year i.e., by 26-3-97 in accordance with the provisions of clause 4 of S.8 of the Karnataka Preservation of Trees Act, there is a deemed permission in accordance with the application made by the petitioner and since there is a deemed permission to fell 1200 trees terming of the felling of 112 trees in excess of 557 as unauthorised, is illegal and unsustainable.

b) ISSUE a writ of declaration declaring that insistence of payment of the value of the trees and collection thereof as per Ann. C dt. 26-2-98 in No.Admn./W/95-96 is illegal and unsustainable in law;

c) ISSUE a writ of mandamus or such other writ/order or direction directing the respondents to refund a sum of Rs. 2,44,500-00 paid by the petitioner under receipt dt. 26-2-1998 as per Annexure-Dspan6 to the petition;

and

(d) ISSUE such other suitable writ/order or direction as this Hon'ble Court deems fit to grant, in the facts and circumstances of the case, in the interests of justice."*

2. The brief facts of the petition are that the petitioner by an application dated 26-3-1998, filed under Section 8(2) of the Karnataka Preservation of Trees Act, 1976, (hereinafter referred to as "the Act"), sought for permission from the Trees Officer to cut and remove 1,200 trees from out of 1,500 trees that were standing on the lands in question. The petitioner had applied for such permission on the premises that these were matured trees and were required to be removed to enable him for proper cultivation of the coffee plants and also that the petitioner intended to replant as per the requirements of the provisions of the Act. It appears that processing of the application took its own time and after conducting necessary investigation, enquiries, etc., the Tree Officer, vide his order dated 17-12-1997 appears to have granted permission for felling a lesser number of trees viz., 557 trees as against 1,200 trees for which permission had been sought for. It is also submitted on behalf of the petitioner that he did cut and removed a larger number of trees than permitted under the order dated 17-12-1997 as such trees were silivientually matured and could not be retained without being felled and as retaining them would have been detrimental to the coffee plantation.

3. The Tree Officer on noticing that the petitioner had felled more number of trees than as had been permitted as per his order dated 17-12-1997, issued a show cause notice vide dated 26-2-1998, indicating that 112 trees, more than permitted number of trees had been cut and removed and as such, the petitioner was required to remit a sum of Rs. 2,44,500-00 being a fine, values of damaged and illicit fellings together with sales tax and other incidental levis. It is also the case of the petitioner that as the petitioner had already felled trees and the cut trees were required to be removed immediately to clear the same from the plantation and also to avoid the same being stolen. Complied with the notice dated 26-2-1998, as the non-compliance would not enable the petitioner to clear the trees and having been placed in a very vulnerable situation, the petitioner did pay this amount, so

that he could remove the trees and the receipt for having paid the same on 26-2-1998 is produced at Annexure-"D" to the writ petition.

4. Sri Madhusudan R. Naik, learned counsel appearing for the petitioner has submitted that the petitioner had applied for permission under the provisions of Section 8(2) of the Act to fell a particular number of trees and for very relevant reasons mentioned in the Act itself, which enable him to seek for such permission and had requested the Tree Officer to grant such permission. Sri Nayak has also further drawn my attention to the provisions of Section 8(4) of the Act, which stood as at the relevant point of time and which operated for granting of a deemed permission in favour of the applicant, if the applicant's request had not been disposed of by the Tree Officer within a period of one year from the date of making of his application. It is the submission of the learned Counsel for the petitioner that in view of the fact that the application was made on 26-3-1996, on the expiry period of one year, deemed permission under Section 8(4) of the Act operates and thereafter, the petitioner is free to cut and remove these trees even without any written permission given by the Tree Officer. When once the law grants such permission, any subsequent order to be passed by the officer is not of any consequence in law as per the learned counsel for the petitioner. In this regard the learned counsel has placed reliance on the decision of the Division Bench of this Court in the case of *State of Karnataka v. Robert D'Silva*, reported in ILR 1995 Kar 2549 : 1996 AIHC 2535).

5. Relying upon the ratio laid down in the said decision, Sri Madhusudan R. Naik submits that once the deemed permission operates statutorily, the Tree Officer loses jurisdiction to pass any orders subsequently and in this view of the legal position, the order dated 17-12-1997 passed by the Tree Officer, restricting the permission to a lesser number of trees is of no consequence in law. It is also submitted by the learned counsel for the petitioner that as the subsequent payment towards compounding of the offence under Section 21 of the Act is only a consequential thing, pursuant to the order dated 17-12-1997, the said extraction of the amount by the Government is illegal and in this view of the matter, the State Government is not entitled to hold on to this amount and as a consequence the said amount is required to be refunded. It is under such circumstances, the petitioner has prayed for issue of a writ of declaration and consequential mandamus directing to refund the amount in question.

6. I find, there are several impediments to grant the reliefs sought for in this petition, for the reasons to be noticed hereunder. In the first instance, a writ of declaration does not lie to declare an administrative or quasi-judicial order to be either illegal or non-est in law. A writ of declaration lies only in respect of legislative provisions, which provisions cannot be quashed by issue of certiorari. In respect of a administrative or quasi-judicial order only a writ of certiorari can be Invoked. Accordingly, the writ of declaration cannot be granted.

7. The second submission of the learned Counsel for the petitioner is with regard to the scope of deemed permission and the Officer concerned losing jurisdiction to pass any order when once deemed permission operated in law. Here again, I find yet another impediment inasmuch as any deemed permission can operate under the provisions of Section 8(4) of the Act only in accordance with law. It has been brought to the notice of the Court in the statement of objections filed by the State that even as per the order dated 17-12-1997, permission to fell lesser number of trees was granted in view of the Government Circular, dated 26-8-1986. This circular directions issued by the Government in exercise of its power under Section 27 of the Act, the context of the provisions of the Act, granting permission to fell trees under Section 8 of the Act and the Government had issued a direction to the officers functioning under the Act while functioning under the Act to ensure that permission to fell only 7.5 trees per hectare at a time is granted and not beyond. It is also mentioned therein that the total extent of land was 77.7 acres and on applying this Government Circular, permission could be granted only to fell 857 numbers of trees. If this is the legal position, then, even under deemed provision, which operates on applying Section 8(4) of the Act can operate only in a manner provided under the law itself and if the deemed provision so operates, it will have to operate only in consonance with the Government Circular, dated 26-8-1986. If that is so, the deemed

provisions also operates only to the extent of permitting 557 number of trees and not beyond. I say this for another reason namely if the concerned officer granting permission, should have granted such a permission within the time permitted under the law, he could have granted permission only to fell this number of trees and not beyond. In view of the Government Circular, but by operating the deemed permission, such permission cannot be enlarged up to the extent which had been applied for by the petitioner/applicant when it could not have been permitted under the law itself. When once the deemed permission also cannot operate beyond permitting the felling of 557 number of trees, the other consequences in law for felling more than the permitted number of trees automatically follows. If the petitioner has felled more than number of trees than what could have been deemed to have been permitted or what has been actually permitted as per order dated 17-12-1997 such consequence cannot be avoided. In this view of the matter, I am of the opinion that the ratio laid down by the Division Bench of this Hon'ble Court in the case of State of Karnataka v. Robert D'Silva does not come to the rescue of the petitioner for seeking reliefs in this petition.

8. This aspect, apart under the provisions of Section 21 of the Act, amount is paid byway of compounding fines. If that is so questioning the illegality of the same by the petitioner does not arise. May be the petitioner compounded the Infraction and the fine was paid under compelling circumstances and to avoid further damage to the felled trees. Even assuming that to be so relief should have been sought for at the relevant point of time and not at any point of time later. The consequential relief of refunding can arise only after quashing of the order dated 17-12-1997 and not otherwise. The petitioner not having chosen to challenge the validity of this order dated 17-12-1997, immediately thereafter and in a manner known to law, and this order dated 17-12-1997, having not been set aside or quashed in a manner provided by law, the consequential relief for refund alone cannot be granted.

9. In this regard, the subsequent amendment that has been brought about to the provisions of Section 8(4) of the Act, whereby the provisions regarding deemed permission has been omitted and the law was amended enjoins the Tree Officer to dispose of the application within a period of three months has been substituted. Sri. Nayak, learned Counsel for the petitioner has brought to my notice that the change in the law has been brought about as a consequence to the observation made by the Division Bench of this Court in Robert D'Silva case. The Division Bench had occasioned to observe in para 19 of the said judgment as under :

"19. Before we part with this case, we are constrained to make certain observations with regard to the deeming provision in Section 8(4) (ii) of the Trees Act. The Act was made with a view to provide for the preservation of trees in the State by regulating the felling of trees and for the planting of adequate number of trees to restore ecological balance, in view of the indiscriminate felling of large number of trees in the rural and urban areas of the State leading to erratic rainfall, recurring famine and floods, soil erosion and consequently ecological disturbances. When that is the object of the Act, it is unfortunate that a deeming provision is introduced in clause (ii) of sub-section (4) of Section 8, which enables an errant or negligent official to keep an application pending for over the prescribed period, enabling the applicant to take advantage of the deeming provision. We are of the view that such a provision should not be permitted to be on the statute such as the Preservation of Trees Act and that the Legislature should consider deleting the same, making alternative provision, safeguarding the interest of the applicants under Section 7."*

10. This aspect also assumes importance inasmuch as the petitioner has admittedly cut the trees subsequent to the order dated 17-12-1997 which expressly permitted him for felling only 557 number of trees. Petitioner was aware that he was acting contrary to this order by felling more number of trees and it is also for this reason that the petitioner without demur at that point of time paid the amount which he was called upon to pay as per the notice dated 26-2-1998 and paid the sum of Rs. 2,44,500-00 which enabled him to clear the excess trees felled beyond the permitted number of trees. The petitioner did not seek for any relief immediately thereafter. But, has approached this Court seeking for the relief of declaration and consequential mandamus to direct the authorities to

refund the amount by filing the writ petition in the year 2000. As of now the amended provision has come into force and is in operating. The prayer for invalidating the order dated 17-12-1997 as a consequence of which the petitioner can claim for refund is sought for the first time by filing the above writ petition in the year 2000, I am of the view that there is considerable delay for seeking the relief and the writ petition is hit by laches and delay also and on this score also, the writ petition is liable to be dismissed.

I find this is not a fit case to exercise the extraordinary discretionary Jurisdiction under Article 226 of the Constitution of India and to interfere for invalidating an order passed by the authority at this point of time particularly, having regard to the amendment that has been brought about by the statute and the statute as it stands now. In any view of the matter I am not persuaded to accept the contentions of the learned Counsel for the petitioner to grant the relief sought for in the writ petition.

Accordingly, this writ petition is dismissed. No order as to costs.

Petition dismissed.

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